

IN THE U.S. PATENT AND TRADEMARK OFFICE



Re application of :

P.Vuori :

Serial No. 09/911,078 :

Filed: July 23, 2001 :

Examiner: G. Gauthier :

Group Art Unit: 2645 :

For: SHORT VOICE MESSAGE (SVM) SERVICE  
METHOD, APPARATUS AND SYSTEM

APPELLANT'S BRIEF

Director  
U.S. Patent and Trademark Office  
Alexandria VA 22313-1405

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Sir:

This Appeal Brief is mailed on February 5, 2004, which is three months after the mailing date of the Notice of Appeal (mailed November 6, 2003). It is believed that a one-month extension of time fee is necessary, but if such is not the case, the Director is authorized to debit the Deposit Account 23-0442 for the appropriate extension of time fee, and it is requested that this be considered a petition therefor, if applicable.

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Deborah J. Clark  
Deborah J. Clark

Date: FEB. 5, 2004

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Practitioner's Docket No. 944-003.081-1

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Appeal  
Brief  
2-18-04  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: P. Vuori  
Application No.: 09/911,078 Group No.: 2645  
Filed: 7/23/2001 Examiner: G. Gauthier  
For: Short Voice Message (SVM) Service Method, Apparatus  
And System

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**TRANSMITTAL OF APPEAL BRIEF**  
**(PATENT APPLICATION—37 C.F.R. § 1.192)**

**NOTE:** The phrase "the date on which" an "appeal was taken" in 35 U.S.C. 154(b)(1)(A)(ii) (which provides an adjustment of patent term if there is a delay on the part of the Office to respond within 4 months after an "appeal was taken") means the date on which an appeal brief under § 1.192 (and not a notice of appeal) was filed. Compliance with § 1.192 requires that: 1. the appeal brief fee (§ 1.17(c)) be paid (§ 1.192(a)); and 2. the appeal brief complies with § 1.192(c)(1) through (c)(9). See Notice of September 18, 2000, 65 Fed. Reg. 56366, 56385-56387 (Comment 38).

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on November 10, 1003

**NOTE:** "Appellant must, within two months from the date of the notice of appeal under § 1.191 or within the time allowed for reply to the action from which the appeal was taken, if such time is later, file a brief in triplicate. . . ." 37 C.F.R. § 1.192(a) (emphasis added).

**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***

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Signature

Date: February 5, 2004

Deborah J. Clark

(type or print name of person certifying)

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

## 2. STATUS OF APPLICANT

This application is on behalf of

- ☒ other than a small entity.  
☐ a small entity.

A statement:

- ☐ is attached.  
☐ was already filed.

## 3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 1.17(c), the fee for filing the Appeal Brief is:

- ☐ small entity \$165.00  
☒ other than a small entity \$330.00

Appeal Brief fee due \$ 330.00

## 4. EXTENSION OF TERM

NOTE: 37 C.F.R. § 1.704(b) ". . . an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph."

NOTE: The time periods set forth in 37 C.F.R. § 1.192(a) are subject to the provision of § 1.136 for patent applications. 37 C.F.R. § 1.191(d). See also Notice of November 5, 1985 (1060 O.G. 27).

NOTE: As the two-month period set in § 1.192(a) for filing an appeal brief is not subject to the six-month maximum period specified in 35 U.S.C. § 133, the period for filing an appeal brief may be extended up to seven months. 62 Fed. Reg. 53,131, at 53,156; 1203 O.G. 63, at 84 (Oct. 10, 1997).

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

(complete (a) or (b), as applicable)

- (a) ☒ Applicant petitions for an extension of time under 37 C.F.R. § 1.136 (fees: 37 C.F.R. § 1.17(a)(1)-(5)) for the total number of months checked below:

Extension (months)	Fee for other than small entity	Fee for small entity
<input checked="" type="checkbox"/> one month	\$ 110.00	\$ 55.00
<input type="checkbox"/> two months	\$ 420.00	\$ 210.00
<input type="checkbox"/> three months	\$ 950.00	\$ 475.00
<input type="checkbox"/> four months	\$ 1,480.00	\$ 740.00
<input type="checkbox"/> five months	\$ 2,010.00	\$ 1,005.00

Fee: \$ 110.00

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

- ☐ An extension for \_\_\_\_\_ months has already been secured, and the fee paid therefor of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ 110.00

or

- (b) ☐ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

#### 5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee \$ 330.00

Extension fee (if any) \$ 110.00

**TOTAL FEE DUE \$ 440.00**

#### 6. FEE PAYMENT

☒ Attached is a ☒ check ☐ money order in the amount of \$ 440.00

☐ Authorization is hereby made to charge the amount of \$ \_\_\_\_\_

☐ to Deposit Account No. \_\_\_\_\_

☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should not be included on this form as it may become public.

- ☐ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

#### 7. FEE DEFICIENCY

**NOTE:** If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to change the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, 1065 O.G. 31-33.

- ☒ If any additional extension and/or fee is required,

AND/OR

- ☒ If any additional fee for claims is required, charge:

☒ Deposit Account No. 23-0442

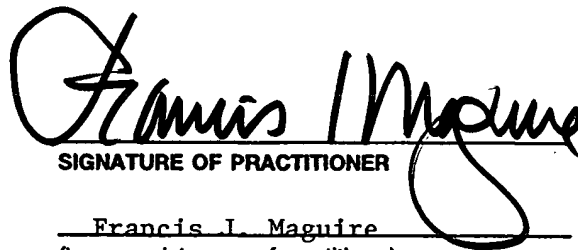
☐ Credit card as shown on the attached credit card information authorization form PTO-2038.

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Date: February 5, 2004

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SIGNATURE OF PRACTITIONER

Francis J. Maguire  
(type or print name of practitioner)

WARE, FRESSOLA, VAN DER SLUYS & ADOLPHSON LLP

P.O. Address  
755 Main Street, P.O. Box 224  
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(Transmittal of Appeal Brief [9-6.1]—page 4 of 4)

This brief is being filed in triplicate in accordance with Rule 192(a). The requisite fee set forth in Rule 17(c) is enclosed. If this fee is for some reason insufficient, the Director is authorized to charge the Deposit Account 23-0442 for the appropriate fee or differential.

I. The real party in interest is Nokia Corporation, Keilalahdentie 4, FIN-02150 Espoo, Finland.

II. There are no related appeals or interferences

III. Claims 1-40 are pending, are rejected and the rejections of all the claims 1-40 are appealed.

IV. The Examiner has indicated in an Advisory Action mailed October 27, 2003, that the Amendment After Final Rejection filed September 22, 2003, will be entered. That amendment corrected dependency errors in claims 27 and 39, and the attached Appendix reflects those two changes.

V. Summary of Invention:

Tiresome entry of numerous letters of the alphabet into a hand-held device for assembling a short text message for transmission via a short message service (SMS) to a second terminal is avoided by the sending of a short voice message (SVM). The SVM is recorded in the sending terminal and sent to a SVM service center (SVMSC). The SVMSC may notify the intended recipient of the arrival of the SVM and await acceptance before sending it or send it immediately if the presence of the intended recipient is detected. The second terminal may then commence a bidirectional communication so that an instant voice message session can be established. Alternatively, the problem can be overcome by converting the spoken SVM to text in the user terminal by means of voice recognition software and sending the converted text to the recipient by means of the traditional SMS infrastructure for display as text or for playback as text converted to voice.

VI. Issues

1. Novelty of claims 1-14, 28-31 and 39 over Hanson (U.S. 6, 215,859).
2. Novelty of claims 23-27, 34-36 and 38 over Baker et al (U.S. 6,507,735).
3. The non-obviousness of claims 15-22 and 32-33 over Hanson in view of Baker.
4. The non-obviousness of claims 37 and 40 over Baker et al in view of Van Den Berg (U.S. 5,459,871).

VII. For each ground of rejection, the claims grouped above by the Examiner do not stand or fall together, and in the argument below, Appellant explains why each of the claims of the group are believed to be separately patentable.

#### VIII. Argument

1. Regarding the novelty rejection of claims 1-14, 28-31 and 39 based on Hanson (U.S. 6,215,859), it is not correct to state that Hanson shows "receiving a completed voice message" at col. 2, line 43, because Hanson's voice message is not already spoken to a conclusion at the first terminal prior to transmission of the completed voice message from the calling party to the voice mail system.

If the Board will look to either Fig. 1 or Fig. 2 of Hanson, the very first step involves the caller dialing a person or voice messaging system. If the recipient of Fig. 1 does not answer, the voice mail system intercepts the call and invites the caller to leave a message in the usual way, which means the caller should commence speaking a spoken message with the caller already connected and speaking with the connection already established to the voice mail system and therefore beginning transmission before being concluded. Similarly, in Fig. 2, the caller dials the voice messaging system, logs in and then starts speaking the message, which is recorded in step 33.

Clearly, Hanson discloses a stand-alone mailbox system (col. 4, line 46) which is distinct from the terminal from which the caller dials, and to which speech energy is transmitted from the caller over a transmission path to the voice message system, where the recording takes place. Therefore, the presently-claimed step of

“receiving a completed voice message transmitted from a first terminal . . . , said completed voice message already spoken to a conclusion . . . at said first terminal prior to said transmission from said first terminal”

is not anticipated by Hanson.

If the Board will also look at Fig. 2, step 24 of the present disclosure, only after the short voice message is concluded is the recipient selected by the sending principal in step 26, and thereafter the SVM sent in step 28 to the instant messaging or short voice message service by the sender's equipment and from there to an instant inbox of the recipient. This unusual and new idea of first concluding a voice message before sending it is quite different from the prior art, as shown by Hanson, because Hanson actually commences his voice message only after establishing the connection to the voice mail server and does not conclude the voice message before making the connection. This distinction is important, because of the nature of the present invention being analogous to the manner in which a text-based instant message is carried out. A text-based instant message is first typed in at the keyboard and concluded before being sent.

Furthermore, as can be seen by the various steps following step 15 of Fig. 1 and step 33 of Fig. 2 of Hanson, the system does not immediately send the recorded voice message to a second terminal and therefore does not anticipate the second step of claim 1 or the third element of claim 8. Rather, Hanson first determines if urgent delivery is chosen and if not, makes the message available for retrieval without any delivery attempt. If urgent delivery is chosen, the system makes a delivery attempt by dialing the recipient's phone number and ringing the phone. Only if the recipient answers does the system play the message for the recipient. This does not correspond to immediately sending a completed voice message to a second terminal, as claimed in the second step of claim 1.

\* \* \*

There is no comparison between the method of the present claim 2 or the apparatus of claim 9 and this last-mentioned urgent delivery method of Hanson, because



Hanson actually telephones the intended recipient and does not check the recipient's availability using a presence service.

In general, presence can be considered as containing various dynamic information of a user accessing a service via different means. Examples of this information are the reachability and availability of the user for communication and other, more varied status information. The retrieval and authorization of presence information has been solved in the internet-based instant (text) messaging context in a proprietary way by AOL. An open-architecture-type realization of presence management is shown, for instance, in U.S. Patent Publication No. 2003/0037103, published February 20, 2003, and owned by the Assignee hereof.

A presence service in a messaging context, according, for instance, to RFC 2778 of the IETF, is a service that accepts, stores and distributes presence information, defined as one or more presence tuples. Presence tuples comprise "status", an optional "communication address", and optional "other presence markup". "Status" means a distinguished part of the presence information of a presentity (presence entity). Status has at least the mutually-exclusive values "open" and "closed", which have meaning for the acceptance of instant messages, and may have meaning for other communication means. "Communication address" means communication means and contact address. "Communication means" indicates a method whereby communication can take place, with instant messaging being one example. "Contact address" is a specific point of contact via some communication means. "Other presence markup" means any additional information included in the presence information in a presentity.

There is nothing like any of these presence services disclosed by Hanson, and Hanson does not anticipate claim 2 or claim 9.

\* \* \*

Regarding claims 3 and 10, although Hanson discloses a notification, it is not of a completed voice message transmitted from a first terminal that has already been spoken to a conclusion before being sent to the service. In contrast to the scenario shown in Fig. 1 of the present disclosure, the caller of Hanson dials the person for whom he or she has

an urgent message (step 11 of Fig. 1), and if the recipient answers, as determined in step 12, the caller gives the message directly to the recipient (step 13) with the "live" speech energy transmitted over the telephone system with the speaker and the recipient connected in real time. If the recipient does not answer, as determined in step 2 of Fig. 1 of Hanson, the voice mail system intercepts the call and the caller speaks the message over the telephone system and it is recorded in the voice mail system and made available for retrieval at the convenience of the user (step 18) if urgent delivery is not chosen (step 17). If urgent delivery is chosen, the system dials the recipient's number and rings the phone. If the recipient answers, the system plays the message for the recipient. Also, if at step 18 urgent delivery is required, the voice mail system queues the message for the next delivery attempt at step 19 and sends the signal for activating a message waiting indicator for alerting the called party in a well-known manner, such as activating a stutter dial tone, displaying a voice-mail icon on a display telephone or CRT display, or illuminating a lamp on a telephone.

This is different from what is claimed in claim 3 and 10, as explained above.

\* \* \*

Regarding claims 4 and 11, claim 4 depends from claim 3, and claim 11 depends from claim 10, which were just discussed above. Claims 4 and 11 are complementary to claims 3 and 10, because they claim that once the notification to the second user has been provided, the user is given the opportunity to signal acceptance, and these claims are patentable for the same reasons explained above in connection with claims 3 and 10, from which they depend and also for the reason that answering a phone is not the same as signaling acceptance. The user can hang-up if the voice message is not accepted but there is no way to signal acceptance.

\* \* \*

Regarding claims 5 and 12, which claim the further steps of receiving a completed voice message from the second terminal spoken by the second user and immediately

sending same to the first terminal, it is incorrect to state that Hanson discloses receiving a voice message from a second terminal spoken by a second user at col. 3, lines 3-10. The only thing that is discussed there is waiting until the called party hangs up if the called party was busy at the time the calling party initially called and then, at step 21, determining that it is time to call the called party because the phones are now back on-hook. This has nothing to do with the called party completing a voice message for the calling party, as claimed in claims 5 and 12.

\* \* \*

Regarding claims 6 and 13, they depend from claims 5 and 12, respectively, discussed above. Since Hanson does not disclose the called party sending a voice message back to the calling party, it cannot be that claims 6 and 13 will be anticipated by Hanson either, because claims 6 and 13 depend from claims 5 and 12, respectively and further limit them to checking the availability of the first terminal before carrying out the step of immediately sending the voice message completed at the second terminal to the first terminal. Checking availability is not shown by Hanson.

\* \* \*

Claims 7 and 14 depend from claims 1 and 8, respectively, and further limit the independent method and apparatus claims 1 and 8 to storing the received voice message in the second terminal for playback to the second user at the convenience of the second user. Hanson, at col. 3, lines 24-35, does not involve saving at the user's terminal but the option to save or delete means to remove or save the message at the mailbox system, not the called party's terminal.

\* \* \*

Regarding independent claim 8, to the extent they are applicable, the comments made above regarding claim 1 apply to claim 8 as well, and furthermore it must be

mentioned that Hanson's disclosure is directed to a method, as can be seen in Figs. 1 and 2 of Hanson. Therefore, Hanson cannot anticipate claim 8, because it does not show the three elements claimed in apparatus claim 8 in combination. For the same reason, the dependent claims of claim 8, i.e., claims 9-14 and 30-31, cannot be anticipated by Hanson, because there is no detailed disclosure in Hanson concerning any apparatus. Moreover, the claimed means for checking availability using a presence service and the means for immediately sending (if available) are not shown by Hanson.

\* \* \*

Regarding claims 28 and 30, they respectively depend from method claim 2 and apparatus claim 8 and claim that the checking of availability is a checking of a status marker (see Fig. 10) of a presence tuple 292 among a plurality of presence tuples 292, 294, 296 of presence information 290 maintained by a presence service 248 (see Fig. 7). The passage cited by the Examiner at col. 4, lines 15-29, has nothing to do with a presence tuple which has to do with a "status", an optional "communication address" and optional "other presence markup", as explained above.

\* \* \*

Claims 29 and 31 depend from claims 28 and 30 discussed immediately above. They further limit the checking of the status marker by further limiting the step of "sending" to a step carried out by a service sending the received voice message to an in-box 274 (see Fig. 9) having an in-box address 314 (see Fig. 10) associated with the presence tuple 292. None of that is shown by Hanson at col. 4, lines 15-29.

\* \* \*

Regarding claim 39, there was a typographical error in the first line in that the dependency was incorrect, whereas it should have been the immediately preceding "terminal" claim 38 instead of "method" claim 28. This has been changed by the above

amendment with the Examiner's permission. In any event, the cited passage at col. 5, lines 6-26, has nothing to do with a presence user agent 276 (see Fig. 7) or an in-box user agent 282 (see Fig. 9).

\* \* \*

Overturning of the novelty rejection of claims 1-4, 28-31 and 39 is requested.

\* \* \* \* \*

2. Regarding the 35 USC 102(e) rejection of claims 23-27, 34-36 and 38 as being anticipated by Baker et al (U.S. 6,507,735), the automated short message attendant (col. 1, lines 7-11) does not anticipate claim 23, because claim 23 does not "read-on" it for the following reasons: Claim 23 claims a user equipment such as the user equipment 14 of Fig. 1 or the user equipment 30 of Fig. 12 of the present disclosure, which is not to say that these two examples are exclusive and could include other kinds of user equipment, such a PDA, desktop computer, or other type of equipment used by a user. Baker et al shows a wireless unit 15 in Fig. 1, which would qualify as a user equipment. Perhaps also the calling party 13 of Fig. 1 of Baker et al is using some kind of a user equipment, although such is not specifically disclosed. Therefore, in order to read claim 23 onto Fig. 1 of Baker et al, the "reading-on" exercise has to be restricted to either the wireless unit 15 or the calling party 13, but not the other elements of Fig. 1, which represent various devices within the telephone system 11. In other words, claim 23 claims various elements in combination within a user equipment itself, and not far-flung over a telephone system 11.

When looking at claim 23 as a whole, what is claimed here is a device that a user, such as the user 10 of Fig. 1 of the present disclosure, can use to store a short voice message received from the first user 10, which allows the first user to input a designation signal designating a second user 32 as an intended recipient (either before or after storing the short voice message), whereafter the user equipment retrieves the stored short voice

message in response to the designation signal and provides the short voice message retrieved from storage and sends it to the second user of a voice message system.

The calling party 13 of Fig. 1 of Baker et al has no capability of storing a short voice message, as claimed in claim 23. The Examiner points to means 27 of Fig. 1 of Baker et al for storing SVMs. However, the short message service center 27 of Fig. 1 of Baker et al is not part of the calling party 13 and does not constitute anything remotely analogous to a user equipment, as claimed in claim 23. The other means cited by the Examiner are also outside the calling party 13 of Fig. 1 of Baker et al and therefore also do not anticipate the claimed combination of claim 23 in a user equipment.

\* \* \*

Regarding claim 24, although the system of Baker et al allows the calling party to view the result of the speech-to-text processing to ensure correctness, this is different from receiving an incoming short voice message from the second user 32 of Fig. 1 of the present disclosure for playback to the first user 10. This claim claims a two-way short voice message communication, which is not discussed at all by Baker et al.

\* \* \*

Regarding claim 25, which depends from claim 24, it further limits the user equipment of claims 23 and 24 to being able to receive a notification of the incoming short voice message from the second user for display or notification thereof by the user equipment and is able to receive an acceptance indication input signal from the first user for sending the acceptance indication input signal to the voice message system in deciding whether to send the incoming SVM from the second user and the user equipment. Again, Baker et al fails to show anything about the second user sending anything back to the first user, much less notification thereof, and does not anticipate claim 25.

\* \* \*

Regarding claim 26, it depends from the independent user equipment claim 23 and further limits claim 23 to including voice recognition means for providing the SVM as a text message for storage in and retrieval from a storage means within the user equipment.

The voice recognition software of Baker et al is not within the calling party 13 or the wireless unit 15 of Fig. 1 of Baker, but rather within the wireless service node 23 of the telephone system 11 (see col. 3, lines 9-11). Therefore, what happens in Baker et al is that the message spoken by the calling party 13 is transmitted over the telephone network 21 through the MSC 17 to the wireless service node 23, where the speech recognition software converts the voice message to text.

The presently-claimed invention, as claimed in claim 23 and as further limited by claim 26, puts the voice recognition means within the user equipment, such as the user equipment 14 of Fig. 1 of the present disclosure. Such is also shown in block 412 of Fig. 12 to the present disclosure (see page 18, lines 2-6).

\* \* \*

Claim 27 had a typographical error, and such as been corrected (with the Examiner's permission) by the amendment to make claim 27 depend from claim 24. Claim 24 further limits claim 23 to receiving an incoming SVM from the second user for storage and the means for storing SVMs and further including means for playback of the incoming SVM from the second user to the first user after retrieval from the means for storing SVMs. Claim 27 further limits claims 23 and 24 to the incoming SVM from the second user being an incoming text SVM for storage as a text message and the means for playback being means for displaying the incoming text message on a display of the claimed user equipment.

As mentioned previously, Baker et al fails to disclose a two-way messaging system and only shows a one-way system

\* \* \*

Regarding claim 34, it depends from independent claim 23, claiming a user equipment. It further limits the last element of the user equipment of claim 23, i.e., the means for sending to an SVM sender user agent, such as shown at reference numeral 280 of Fig. 9. The Examiner points to col. 3, lines 7-24 for an SVM sender user agent. According to RFC 2778, as referenced in the Specification, a "sender user agent" is a means for a "principal" to manipulate zero or more "senders", where a sender is a source of "instant messages" to be delivered by the "instant message service". A "principal" is a human, program, or collection of humans and/or programs that chooses to appear to the "presence service" as a single actor, distinct from all other "principals".

Note that claim 34 refers to the claimed "means for sending". Referring back to claim 23, the claimed "means for sending" is part of the claimed "user equipment", which is shown, for instance, at reference numeral 14 of Fig. 1, reference numeral 90 of Fig. 3, reference numeral 96 of Fig. 4, reference numeral 124 of Fig. 5, reference numerals 96, 124, 64, 194, 196, 198, 200, 202, 204 of Fig. 6, reference numerals 14, 30 of Fig. 11, or reference numeral 30 of Fig. 12.

In limiting the means for sending of claim 23 to an SVM sender user agent, such as the user agent 280 of Fig. 9, it means that claim 23 is limited by claim 34 to the means for sending comprising and SVM sender user agent. It does not mean that the claimed user equipment becomes broad enough to read on the wireless service node 23 or any other part of the telephone system 11 of Fig. 1 outside the calling party 13 or the wireless unit 15. The part referred to by the Examiner is outside the user equipment of Fig. 1 of Baker et al and therefore claim 34 does not read on the wireless service node 23 of Fig. 1 of Baker et al.

Similarly, regarding claim 35, the disclosure in Baker et al at col. 4, lines 34-43, while describing a voice recognition software which enables a currently-unreachable subscriber to receive a short message instead of a voice message, the voice recognition software used to carry this function out is not located within a user equipment, as claimed in claim 35, which depends from claim 24, which in turn depends from claim 23.

\* \* \*



Regarding independent claim 36 (IM Service), it is not correct for the Examiner to state that the system of Baker et al provides an SVM from, for instance, the calling party 13 of Fig. 1 of Baker et al to a receiving principal, for instance, using the wireless unit 15 of Fig. 1, if the status information indicates availability for acceptance. Rather, it is only if the wireless unit 15 is not available (see step 35 of Fig. 2) that the invention of Baker et al goes into effect. In such a case, the call is intercepted, and the calling party 13 is subjected to a series of questions to determine if the calling party would like to leave a message and if so, having that calling party enunciate the message so that it can be converted to text by the wireless service node 23 and then having it sent back for display to make sure it is correct, and only then is the correct text message sent to the wireless unit 15, regardless of whether or not the wireless unit is available (see col. 1, lines 32-35).

Furthermore, please note that the short voice message provided by the claimed SVM sending principal is the same SVM provided to the receiving principal without conversion in transit, as in Baker et al. In other words, the terms of claim 36, whether applied to a short voice message that is still voice or has been converted to text is provided in that form from source to destination without conversion. This is made explicit in the claim by the fact that the short voice message provided by the SVM sending principal is the same ("said") SVM provided to the receiving principal. The short text message provided to the wireless unit 15 of Fig. 1 of Baker et al is not the same voice message sent by the calling party 13 to the wireless service node 23 over the telephone network 21 and the MSC 17.

Therefore, claim 36 is not anticipated by Baker et al.

\* \* \*

Regarding independent claim 38, a terminal is claimed for accessing an instant messaging service that is cast in terms comparable to the terms used in RFC 2778 and as discussed in the specification beginning at page 11, line 18. None of this has any relation to the disclosure of Baker et al. For instance, Baker et al does not mention anything about "presentities", "watchers", "watcher user agent" and certainly nothing about SVM presentities or SVM sender-user agents.

Moreover, like claim 36, claim 38 provides the SVM to the SVM server for delivery if the presence information indicates availability, whereas the system of Baker et al sends a short text message if the user is unavailable to receive a live connection from the calling party. So the system of Baker et al converts such a live message to text and sends it to the short message service center 27, where it is sent to the wireless unit 15.

Regarding claim 39, which now depends from claim 38, note that the claim combines two agents in the claimed terminal of claim 38. One of these user agents is an SVM presence user agent 276, such as shown in Fig. 7, for interacting with the SVM presentity 254 of the same figure, and an SVM inbox user agent 282, such as shown in Fig. 9. Both of these user agents are included in the terminal, as per claim 39. This means that the principal of Fig. 7 can utilize the SVM presence UA 276 to update the SVM presentity 254, which is in turn provided to the SVM presence service 248 and made available to others, such as the SVM watcher 256. Likewise, short voice messages sent to the service 270 of Fig. 9 can be forwarded to the SVM inbox 274 and accessed by the SVM inbox UA 282 of the claimed terminal by the illustrated principal on the right of Fig. 9.

Looking at the combination of claims 38 and 39 as a whole, all four user agents of Figs. 7 and 9 are now included in the claimed terminal. In other words, the user agents 276, 278, 280 and 282 are claimed as being part of the terminal.

As mentioned previously, the Baker et al disclosure does not describe a two-way service utilizing both message and presence services.

\* \* \*

Overturning of the 35 USC 102(e) rejection of claims 23-27, 34-36, and 38-39 is requested.

\* \* \* \* \*

3. Regarding the 35 USC 103 rejection of claims 15-22 and 32-33 as being unpatentable over Hanson in view of Baker, it is noted that claim 15 claims a voice

message system that includes a presence service within the claimed meaning. The Examiner's reading of the claimed "presence service" onto the Hanson patent at col. 4, line 18, is not correct, because the activities carried out by the Hanson system do not qualify as a presence service, such as disclosed in Figs. 7, 8 and 10. The present disclosure discloses a presence service 248 in Fig. 7 as claimed in claim 15 and described in the specification beginning at page 11, line 18. Such a presence service 248 serves to accept SVM presence information on a line 250 and store it. An assembly of such presence information is shown in Fig. 10 comprising an arbitrary number of elements called presence tuples.

None of this sort of presence service is disclosed by Baker et al. Besides that, contrary to claim 15, Baker et al discloses the system verifying if the subscriber's handset is available, i.e., reachable and not busy and, if not available, tells the caller that he can leave a message. The caller then has to decide whether or not to leave a message and if such is decided, then, and only then, will the message be converted to text and sent *when the wireless unit is available to receive short messages*. Contrary to this, claim 15 checks availability and sends the received message if the second terminal is available.

If the Board will look at Fig. 11 of the present disclosure, it shows means 320 for receiving an SVM, means for storing 326 the received voice message, a presence service 322 for checking availability of an intended second user at a second terminal, and means for sending 324 the stored received message from the first terminal to the second terminal if the second terminal is available. If claim 15 merely claimed the means for checking availability in those terms, then there would be some flexibility in the meaning of the claimed means. However, the presently-claimed invention claims that the means for checking availability is a presence service, which has a meaning quite different from what is shown by Hanson and Baker. It would seem that the broadest reasonable interpretation of "a presence service" would have to be a presence service such as commonly known in the art and as described in the specification. The phrase "presence service" is not used anywhere by Hanson or Baker et al, and the Examiner is impermissibly stretching the meaning of the claimed presence service in making a Procrustean bed for Hanson and Baker to lie in.

Regarding claim 16, it needs to be read in context of the claimed presence service

of claim 15, where the service center, in addition to the presence service, includes means for notifying the second terminal, as in Fig. 1 of the present disclosure, where the recipient receives notification in panel 3 of the illustration.

\* \* \*

With regard to claim 17, in addition to the limitations of claim 15, as illustrated in Fig. 11 within the block with the reference numeral 50, claim 17 further limits the voice message system to one or more of the plurality of terminals 14, 30, comprising the various means shown in Fig. 12, including means for receiving voice messages 412 spoken by the first user, for instance, into the microphone 414, means for storing voice messages 420, means for receiving a designation signal 424, means for retrieving the stored voice message 428 in response to the designation signal 426, and means for sending 434. There is nothing like the combination of claims 15 and 17 shown in either Hanson or Baker taken alone or in combination.

The Examiner points to col. 4, lines 30-36. However, it should be pointed out that not only are there no means for storing voice messages shown explicitly by Hanson, but even if such were shown, it would not be in a user terminal but rather in a central server. Therefore, Hanson does not show means for storing voice messages in a terminal, as claimed in claim 17. The same comment could be made concerning the disclosure of Hanson at col. 4, lines 40-45, 56-60 and 56-64.

\* \* \*

Regarding claim 18, it depends from claim 17 and further limits one or more of the plurality of terminals to means for receiving (see e.g. means 450 of Fig. 12) an SVM incoming from the second user. It also includes means for playback 456 of the incoming voice message to the first user. As previously pointed out, neither Hanson nor Baker contemplates a two-way voice messaging system.

The passage cited at col. 4, lines 30-36, and likewise the passage at col. 4, lines 40-45 refer to receiving an incoming voice message from a first user and have nothing to do with receiving an incoming voice message from a second user.

\* \* \*

Regarding claim 19, it depends from claim 18 and further limits claim 18 to notification of an incoming voice message *from the second user* and, as explained previously, there is no second user sending any voice message in either of the applied references.

\* \* \*

Regarding claims 20-22, they depend from claim 17, which has been discussed previously and claims the system of claim 15 in great detail, with most of the blocks of Figs. 11 and 12 claimed explicitly in combination in a system claim. Although Hanson shows a voice-mail methodology, there is no explicit system disclosed. Baker shows a rudimentary system in Fig. 1 but does not show any details, such as claimed in claims 15, 17 and 20-22. Moreover, the limitations of claim 20 have to do with limiting the terminal detailed in claim 17 to also including voice recognition means. The voice recognition means pointed out by the Examiner are not in the terminal, but in the server.

\* \* \*

Regarding claim 32, it depends from independent claim 15 and further limits claim 15 to the presence service checking a status marker, such as the status marker 298 of Fig. 10, which is part of a presence tuple 292 among a plurality of presence tuples in presence information 290 maintained by the presence service (248). As previously pointed out, Hanson does not disclose a presence service as claimed. The passage at col. 4, lines 15-29, deals with mailboxes, not presence information as claimed and as shown in Fig. 10.

\* \* \*

Claim 33 depends from claim 32 and further limits the presence information of claim 32 to sending the received voice message to an inbox (274) having an inbox address (314) associated with the presence tuple (292) of claim 32. The passage at col. 4, lines 15-29 again does not disclose an SVM inbox address associated with a presence tuple.

\* \* \*

Overturning of the obviousness rejections of claims 15-22 and 32-33 is requested.

\* \* \* \* \*

4. Regarding the 35 USC 103 rejection of claims 37 and 40 as being unpatentable over Baker in view of Van Den Berg (U.S. 5,459,871), the Examiner states that Baker discloses an automated short message attendant, wherein the terminal comprises means for transmitting presence information to the server, pointing to col. 4, lines 13-33 and further stating that the system tracks the status of the subscriber's mobile unit for his presence on the network; and in that the system includes an SVM service (15 of Fig. 1), responsive to an instant voice message from a sending principal addressed to an SVM inbox (23 on Fig. 1), for checking the status marker of the SVM inbox and for delivering the instant voice message if the status marker indicates availability for receipt thereof, pointing to col. 3, lines 7-24, and stating that the service node sends the spoken message of the calling party as a short message to the subscriber when the mobile unit is available.

Respectfully, applicant has to take issue with this interpretation of what Baker shows. First of all, Baker has nothing to do with a terminal capable of transmitting presence information or receiving presence information from a server, and certainly has nothing to do with a server with means for maintaining presence information. Presence has a meaning different from what is shown by Baker and as explained in the specification in connection with Fig. 7, Fig. 8 and Fig. 10. The Examiner admits that Baker does not show presence tuples being maintained but points to Van Den Berg for

teaching a server comprising means for maintaining presence information characterized in that the presence information includes presence tuples, each tuple comprising a status marker and a communication address identifying at least one of a short voice message service and an SVM inbox address, pointing to col. 8, lines 35-55.

However, since Baker et al has nothing to do with presence information, one of skill in the art of Baker et al would not look to Van Den Berg, which has to do with a distributed data processing system, and nothing to do with a messaging system. Likewise, one of skill in the art in a distributed data processing system would not look to an automated short message attendant service such as disclosed by Baker et al to create a messaging system. These are non-analogous art areas, and it is impermissible for the Examiner to try to combine these two references.

There is no objective teaching in either Baker et al or Van Den Berg that would lead one of ordinary skill in the art to combine the references. Baker et al relates to automated short message attendant that solves the drawbacks of the various then-available messaging services that do not require a user to have access to a personal computer or other web-capable device. Van Den Berg has to do with a distributed data processing system which detects dependencies between transactions caused by conflicting block requests. In a system where access of users to resources require blocks, the opening of resources can be delayed because of dependencies of transactions that can cause holdups, and deadlock can occur. Deadlock detection mechanisms have been proposed prior to Van Den Berg's invention, but these proposals suffered from certain drawbacks. There is a reference cited by the Examiner at col. 8 to a delete process call that uses the word "tuple" and the phrase "owner of the tuple" and the word "status", but this is just a detail of the delete process and has nothing to do with presence information. Baker and Van Den Berg are directed to disparate teachings which address different problems, and there is no reason or suggestion in either prior art reference to enable their combination in the obviousness analysis advanced by the Examiner.

When an obviousness determination is based on multiple prior art references, there must be a showing of some "teaching, suggestion, or reason" to combine the references. *Winner International Royalty Corp. v. Wang*, 202 F.3d 1340, 1348, 53 USPQ 2d 1850, 1585 (Fed. Cir.) cert. denied, 530 US 1238 (2000). The Federal Circuit further

instructs that “[t]he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.” *In re Fritch*, 972 F.2d 1260, 1266 Note.14 23 USPQ 2d 1780, 1783-84 N.14 (Fed. Cir. 1992) *citing In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). It is further established that “such a suggestion may come from the nature of the problem to be solved, leading inventors to look to references relating to possible solutions to the problem.” *Pro-Mold & Toolco v. Great Lakes Plastics, Inc.*, 75 F.3d 1568-1573, 37 USPQ 2d 1626, 1630 (Fed. Cir. 1996), *citing In re Rinehart*, 531 F.2d 1048-1054, 189 USPQ 143, 149 (CCPA 1976) considering the problem to be solved in a determination of obviousness. The Federal Circuit reasons in *Para-Ordnance Mfg. v. SGS Importers International Inc.*, 73 F.3d, 1085, 1088-89, 37 USPQ 2d 1237-1239-40 (Fed. Cir. 1995), *cert. denied*, 519 US 822 (1996) for the determination of obviousness, the Court must answer whether one of ordinary skill in the art who sets out to solve the problem and who had before him in his workshop the prior art, would have been reasonably expected to use the solution that is claimed by the Appellant. However, “[o]bviousness may not be established using hindsight or in view of the teachings or suggestion of the invention”. In addition, the CAFC requires the Patent and Trademark Office to make specific findings on a suggestion to combine prior art references. *In re Dembiczak*, 175 F.3d 994, 1000-01, 50 USPQ 2d 1614, 1617-19 (Fed. Cir. 1999). “The combination of elements from non-analogous sources, in a manner that reconstructs the applicant’s invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness.” *Oetiker*, 977 F.2d at 1445, 24 USPQ 2d at 1446.

The Examiner has failed to establish a *prima facie* case of unpatentability with respect to all of these claims and, in particular, with respect to claims 37 and 40.

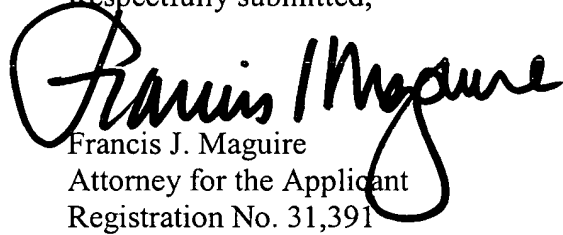
Overturning of the 35 USC 103 rejection of claims 37 and 40 is requested.



IX Conclusion

The rejections of the final Action of August 7, 2003, having been shown to be inapplicable, overturning thereof is requested.

Respectfully submitted,

  
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Appendix A

1. (previously presented) Method for use in a telecommunications network for providing messages between users, comprising the steps of:
  - receiving a completed voice message transmitted from a first terminal for forwarding to a second user at a second terminal, said completed voice message already spoken to a conclusion by a first user at said first terminal prior to said transmission from said first terminal, and
  - immediately sending the completed voice message to the second terminal.
2. (previously presented) The method of claim 1, further comprising a step of checking availability of said second terminal or said second user using a presence service and immediately sending the completed voice message only if available.
3. (previously presented) The method of claim 1, further comprising the step of notifying the second user at the second terminal of the completed voice message prior to said step of immediately sending.
4. (Original) The method of claim 3, wherein said step of immediately sending the received voice message to the second terminal is carried out only after the second user signals acceptance.
5. (Original) The method of claim 1, further comprising the steps of:
  - receiving a completed voice message from the second terminal spoken by the second user, and
  - immediately sending the received voice message to the first terminal.
6. (previously presented) The method of claim 5, further comprising the step of checking the availability of said first terminal before carrying out said step of immediately sending the voice message completed at the second terminal to the first terminal.

7. (Original) The method of claim 1, further comprising the step of storing the received voice message in the second terminal for playback by the second user at the convenience of the second user.
8. (previously presented) Apparatus for use in a telecommunications network for providing messages between users, comprising:
- means for receiving a voice message from a first terminal spoken by a first user for a second user at a second terminal;
  - means for checking availability of said second terminal or second user using a presence service; and
  - means for immediately sending the received voice message to the second terminal if available.
9. (Original) The apparatus of claim 8, further comprising means for storing the voice message until the means for checking availability determines the second terminal is available.
10. (Original) The apparatus of claim 8, further comprising means for notifying the second user at the second terminal of the received voice message from the first user prior to the received voice message transmission to the second terminal.
11. (Original) The apparatus of claim 10, wherein the received voice message is sent to the second terminal only after the second user signals acceptance.
12. (Original) The apparatus of claim 8, further comprising:
- means for receiving a voice message from the second terminal spoken by the second user in reply to the voice message from the first user; and
  - means for immediately sending the voice message received from the second user to the first terminal.

13. (Original) The apparatus of claim 12, further comprising means for checking the availability of the first terminal before immediately sending the voice message received from the second terminal to the first terminal.
14. (Original) The apparatus of claim 8, further comprising means for storing the voice message received in the second terminal for playback to the second user at the convenience of the second user.
15. (previously presented) A voice message system including a plurality of terminals and a voice message service center, said service center comprising:
- means for receiving a voice message from a first user terminal;
  - means for storing the received voice message from the first terminal;
  - a presence service for checking availability of an intended second user at a second terminal;
  - means for sending the stored received message from the first terminal to the second terminal if the second terminal is available.
16. (Original) The system of claim 15, said service center further comprising means for notifying the second terminal of the voice message received from the first terminal wherein the received voice message from the first terminal is sent to the second terminal upon receiving an acceptance signal from the second terminal in response to the notification.
17. (Original) The system of claim 15, wherein one or more of said plurality of terminals comprises:
- means for receiving said voice message at said first user terminal spoken by a first user for providing said voice message from said first user terminal to said means for receiving said voice message at said service center;
  - means for storing voice messages including said voice message spoken by said first user;

means for receiving a designation signal from said first user designating a second user as an intended recipient;

means for retrieving the stored voice message in response to the designation signal for providing the voice message retrieved from storage and the designation signal; and

means for sending the voice message retrieved from storage and the designation signal to the second user of the voice message system as an outgoing voice message.

18. (Previously Presented) The voice message system of claim 17, wherein said one or more of said plurality of terminals further comprises:

means for receiving an incoming voice message from the second user for storage in the means for storing received voice messages; and

means for playback of the incoming voice message to the first user after retrieval from the means for storing voice messages by the means for retrieving stored voice messages.

19. (Original) The voice message system of claim 18, wherein said one or more of said plurality of terminals further comprises:

means for receiving notification of the incoming voice message from the second user for display or notification thereof to the first user; and

means responsive to an acceptance indication input signal from the first user for sending the acceptance indication input signal for use in the voice message system in deciding whether to send the incoming voice message from the second user to the first user.

20. (Original) The voice message system of claim 17, wherein the means for receiving the voice message spoken by the first user includes voice recognition means for recognizing the voice message spoken by the first user for providing the voice message as a text message for storage in and retrieval from the means for storing voice messages as a text message for transmission as an outgoing text voice message via a short message service center.

21. (Original) The voice message system of claim 20, wherein the means for receiving an incoming voice message from the second user may include means for receiving an incoming text voice message for storage in the means for storing voice messages as a text message and wherein the means for playback of the incoming text voice message is for displaying the incoming text message on a display of the user equipment.

22. (previously presented) The system of claim 20, wherein the means for receiving an incoming voice message from the second user is means for receiving an incoming text voice message for storage in the means for storing voice messages as a text message and wherein the means for retrieving the stored voice message is also for converting the retrieved voice message to a voice signal for playback on a means for playback as an enunciated voice message.

23. (Original) User equipment for use in a voice message system, comprising:  
means for receiving a short voice message (SVM) spoken by a first user;  
means for storing SVMs including said SVM spoken by said first user;  
means for receiving a designation signal from the first user designating a second user as an intended recipient;  
means for retrieving the stored SVM in response to the designation signal for providing the SVM retrieved from storage and the designation signal; and  
means for sending the SVM retrieved from storage and the designation signal to the second user of the voice message system as an outgoing SVM.

24. (Original) The user equipment of claim 23, further comprising:  
means for receiving an incoming SVM from the second user for storage in the means for storing SVMs; and  
means for playback of the incoming SVM to the first user after retrieval from the means for storing SVMs by the means for retrieving stored SVMs.

25. (Original) The user equipment of claim 24, further comprising:  
means for receiving notification of the incoming SVM from the second user for display or notification thereof by the user equipment; and  
means responsive to an acceptance indication input signal from the first user for sending the acceptance indication input signal for use in the voice message system in deciding whether to send the incoming SVM from the second user to the user equipment of the first user.
26. (Original) The user equipment of claim 23, wherein the means for receiving the SVM spoken by the first user is voice recognition means for providing the SVM as a text message for storage in and retrieval from said means for storing SVMs as a text message for transmission as an outgoing text SVM via a short message service (SMS) center.
27. (previously presented) The user equipment of claim 24, wherein the means for receiving an incoming SVM from the second user is means for receiving an incoming text SVM for storage in the means for storing SVMs as a text message and wherein the means for playback of the incoming text SVM is for displaying the incoming text message on a display of the user equipment.
28. (previously presented) The method of claim 2, wherein said checking availability is a checking of a status marker (298) of a presence tuple (292) among a plurality of presence tuples of presence information (290) maintained by a presence service (248).
29. (previously presented) The method of claim 28, wherein said immediately sending the received voice message is carried out by a service (270, 310) sending the received voice message to an inbox (274) having an inbox address (314) associated with said presence tuple (292).
30. (previously presented) The apparatus of claim 8, wherein said means for checking availability is carried out by a presence service (248) checking a status marker

(298) of a presence tuple (292) among a plurality of presence tuples of presence information (290) maintained by a presence service (248).

31. (previously presented) The apparatus of claim 30, wherein said means for of immediately sending is carried out by a service (270, 310) sending the received voice message to an inbox (274) having an inbox address (314) associated with said presence tuple (292).

32. (previously presented) The system of claim 15, wherein said means for checking availability is carried out by a presence service (248) checking a status marker (298) of a presence tuple (292) among a plurality of presence tuples of presence information (290) maintained by a presence service (248).

33. (previously presented) The system of claim 32, wherein said means for of immediately sending is carried out by a service (270, 310) sending the received voice message to an inbox (274) having an inbox address (314) associated with said presence tuple (292).

34. (previously presented) The user equipment of claim 23, wherein said means for sending comprises an SVM sender user agent (280).

35. (previously presented) The user equipment of claim 24, wherein said means for receiving an incoming SVM is an SVM inbox user agent (282).

36. (previously presented) An instant messaging service, comprising  
a presence service (248), responsive to presence information (250), for providing (252) status (298) information; and  
a short voice message (SVM) service (270), responsive to an SVM provided by an SVM sending principal, for providing said SVM to a receiving principal if said status information indicates availability for acceptance of said SVM.



37. (previously presented) A messaging system comprising at least one terminal and a server, wherein

the terminal comprises means for transmitting presence information to the server and means for receiving presence information from the server, and the server comprises means for maintaining presence information characterized in that said presence information includes presence tuples, each tuple comprising a status marker and a communication address identifying at least one of a short voice message (SVM) service and an SVM inbox address, and in that

said system includes an SVM service, responsive to an instant voice message from a sending principal addressed to an SVM inbox, for checking said status marker of said SVM inbox and for delivering said instant voice message if said status marker indicates availability for receipt thereof.

38. (previously presented) Terminal for accessing an instant messaging service for receiving instant messages from senders of instant messages and for providing instant messages to inboxes, said service associated with a presence service for receiving presence information about presentities and for providing said presence information to watchers, said terminal comprising:

a short voice message (SVM) watcher user agent (278) for receiving presence information about an SVM presentity (254); and

an SVM sender user agent (280) for providing an SVM to an SVM server (270) for delivery if said presence information indicates availability.

39. (previously presented) The terminal of claim 38, further comprising:

an SVM presence user agent (276) for interacting with said SVM presentity; and  
an SVM inbox user agent (282) for interacting with an SVM inbox (274).

40. (previously presented) A data structure embodied in a computer-readable medium for storage in a physical device, characterized in that

the data structure is a short voice message (SVM) presence information (290) database for storing SVM presence tuples (292, 294, 296, ..., n), each tuple having a

status marker (298) indicative of availability for receipt of short voice messages, and a communication address (302, 304, ..., n) indicative of at least one of an SVM service (310, 312, ..., n) and an SVM inbox address (314, 316, ..., n).